IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1983 OF 2004

Dagadu Pandurang Salunkhe, .. Petitioner
Vs
Shahaji Bharat Pawar, .. Respondent
Mr Macchindra A. Patil, for the petitioner.

CORAM : D.B.BHOSALE, J.

DATE : FEBRUARY 18, 2005.

P.C.

1. Heard Mr Patil, learned counsel for the petitioner.

2. The petitioner's application for appointment of court commissioner has been rejected on the following grounds: firstly, that the commissioner cannot be appointed for collecting evidence to establish possession of the petitioner-plaintiff, secondly, the application was filed at belated stage and thirdly on the ground that in another suit filed by the petitioner seeking permanent injunction the commissioner was appointed and he had inspected the suit property and he had produced the report in that suit. No attempts were made by the plaintiff to get that report produced on the record in the instant suit. Mr Patil, learned counsel for the petitioner,

submitted that another suit in which the court commissioner was appointed was a suit for injunction simpliciter whereas the instant suit is for specific performance of an agreement and, therefore, the appointment of the court commissioner to find out who is in possession is necessary.

3. After having heard the learned counsel for the petitioner and considered the findings of the courts below, I find absolutely no merit in this writ petition. It is still open for the petitioner to produce a copy of the court commission's report filed in his suit for permanent injunction in the instant suit. The judgment relied upon by the petitioner in Ramchandra Bhikaji Jagtap Vs. Dudhram Langruji Padvekar, 2003 (4) ALL M.R 990 is of no avail to the petitioner in view of the peculiar facts and circumstances of the case. The writ petition is dismissed.

(D.B.Bhosale, J.)